IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5612 OF 2004

Bombay Mercantile Co-op.
Bank Limited ... Petitioner

versus

Sirajbhai G. Lehri and ors. ... Respondents

...

Mr. P.S.Dani, for the Petitioner.

M/s. Desai & Diwanji for Respondents Nos. 1 to 5.

...

CORAM : A.M.KHANWILKAR,J.

3rd September 2004

P.C.:

. In all four points have been argued by Mr. Dani, for the Petitioner. The first contention is that the provisions of the Maharashtra Rent Control Act are ultra vires. This question is no more open as it is finally concluded by the decision of Division Bench of our High Court in Writ Petition No. 555 of 2001 decided on 20th July 2001 in the case of M/s. Crompton Greaves Ltd. v. State of Maharashtra

and ors.

2. The next point canvassed before this Court is that the suit as filed by the plaintiffs suffered from misjoinder of parties and cause of action. There is no substance even in this submission. Order 1, rule 1, C.P.C., clearly provides for joining of more than one plaintiffs in one suit if their right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative. In the present case, it is not in dispute that it is one agreement which was executed by all the plaintiffs together in favour of the Petitioner to induct the Petitioner as tenant in two different premises. The Court below has, in my view, rightly relied on the principle stated in the reported decisions referred to in paras 7 and 9 of the impugned judgment to hold that the suit in the fact situation of the present case cannot be said to be incompetent on the ground of misjoinder of cause of action or parties. No fault can be found with the said conclusion reached by the Court below.

3. The third contention raised on behalf of the Petitioner is that it is the admitted position that the tenancy created under the joint agreement was terminated by letter dated 17th September 1990. On and from that date, the Petitioners cannot be said to be contractual tenants, but had the protection by virtue of provisions of the Bombay Rent Control Act, as was applicable at the relevant time. In such a situation, it was not open to the Respondents landlords to once again terminate the tenancy by giving another notice on 23rd July 2000 and then to assert that now they have no protection in terms of the provisions of the Maharashtra Rent Control Act, as is applicable at present. In the first place, this contention has not been specifically raised before the Courts below. Moreover, it is not the case of the Petitioners that the Petitioners ceased to have any relation of landlord and tenant between the parties after 17th September 1990. If it is so, the Respondents could legitimately terminate the tenancy on 23rd July 2000 and proceed to file the suit on the assumption that the Petitioners have no protection of the Maharashtra Rent Control

Act. In the circumstances, there is no substance even in this grievance.

4. The last submission canvassed on behalf of the Petitioners is that no statutory notice under section 164 has been given to the Petitioners which was a co-operative society, as was required by the provisions of the Maharashtra Co-operative Societies Act. This submission clearly overlooks the fact that the notice required to be given under section 164 of the Act is in respect of the act touching the business of the society. In the circumstances, the submission as is canvassed cannot be countenanced. For, taking the premises on rental basis or on tenancy cannot be said to be an act touching the business of a society. At best, it will fall within the realm of management of the society. The distinction between the business of the society and management of the society has been considered in several decisions, while examining the purport of section 91 of the Act. Keeping that distinction in mind, the argument advanced on behalf of the Petitioners will have to be rejected.

5. Accordingly, this writ petition fails and the same is dismissed.

6. At this stage, Mr. Dani seeks time on the ground that the Petitioners are inclined to take up the matter in appeal. Since the Petitioners are carrying on banking activities and are using the premises for commercial purposes, request made on behalf of the Petitioners needs to be acceded to. The decree for eviction passed against the Petitioners shall not be given effect to for a period of six weeks from today, on condition that the Petitioners shall file undertaking to be sworn by the authorised signatory of the Petitioner Bank within two weeks from today.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)